

### **REMARKS**

Applicant thanks the Examiner for the careful consideration given to this application. Reconsideration is now respectfully requested in view of the amendment above and the following remarks.

Claims 1-15, 17-23 and 25-30 are pending in this application. Claims 1, 15, and 30 are independent claims. Claims 1, 5, 6, 29, and 30 are amended. Claim 30 has been amended to incorporate the elements of Claims 1, 7, and 8. Claim 1 has been amended to remove one element (the "3:1 ratio"), which has been incorporated into Claim 6. Most of the elements of Claim 5 have been incorporated into Claim 1. Claim 29 has been amended to depend from Claim 1 instead of from Claim 3. Claims 16 and 24 were previously cancelled without prejudice or disclaimer. Reconsideration and allowance of the present application are respectfully requested.

### **Allowable Subject Matter**

Applicant notes with appreciation the Examiner's indication that Claims 15 and 17-23 are allowed and that Claim 30 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended Claim 30 accordingly and respectfully requests that Claim 30 be indicated as being allowed.

### **Claim Rejections Under 35 U.S.C. §103**

Claims 1-12, 14 and 25-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0092218 to Black (hereinafter "Black") in view of German Publication No. De 4209105 A1 to Heister (hereinafter "Heister"). This rejection is respectfully traversed for at least the following reasons.

Claim 1, as amended, recites:

A sports net, including a mesh structure formed by a foil with permanently-open holes distributed over its surface, wherein the sports net is adapted to be used in the playing of at least

one sport, and wherein the size, shape and/or arrangement of the holes relative to each other is/are adapted to the imprint and/or for an optimised flow of forces within the net structure.

Applicant respectfully submits that the cited reference fail to support the rejection of Claim 1 and its dependent claims under 35 U.S.C. § 103(a), for at least the following reasons.

In the only portion of the Office Action that appears to possibly relate to these elements of amended Claim 1, the Office Action, noting page 2, states, “Black recognizes that nets can be manufactured having various mesh sizes and shapes, depending on the application and strength needed,” citing paragraph 29 of Black. However, neither paragraph 29 nor any other portion of Black that Applicant has noted teaches or suggests, “wherein the size, shape and/or arrangement of the holes relative to each other is/are adapted to the imprint and/or for an optimised flow of forces within the net structure,” as claimed in amended Claim 1. “Strength” does not relate to “adapted to the imprint,” and “strength” also does not mean “an optimized flow of forces within the net structure.” “Application” is explained in Black, e.g., at paragraph 4, and also does not relate to “imprint” or “flow of forces.” Furthermore, Applicant has not found any portion of Heister that would address this shortcoming of Black.

Applicant notes that the only nets discussed in Black are “mesh nets” and “cord nets.” Black at paragraphs [0029]-[0030]. In view of this, Applicant agrees with the Office Action’s further statement, “Black does not explicitly describe a foil net;” in fact, Applicant respectfully submits that Black fails to either explicitly or implicitly recite a foil net. Black is limited to “mesh nets” and “cord nets.” Office Action at 2. The Office Action then states, “Heister teaches that advertising nets can also be made from transparent sheets of metal or plastic; such sheets are broadly considered to be foils.” Office Action at 2. Applicant respectfully submits that there are several problems with this rejection.

First, the Office Action, in alleging obviousness of combining Black and Heister, states, “As it has been well-established that the conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art and to select features from the prior art to effect results expected from these features is within the purview of 35 USC 103, the selection of any known netting material to form the Black net, including foil, would be within the level of ordinary skill in the art.” Office Action at 2-3. However, the Office Action fails to state any problem being solved or goal being accomplished by combining the teachings

of Heister with those of Black. For example, it is not clear in the Office Action what “features from [Heister are selected] to effect results expected from these features.” Black addresses “mesh nets” and “cord nets” with advertising printed on the nets. Heister addresses an advertising medium comprising a sheet of material that is perforated so that it is transparent to one looking from the side on which advertising is not printed, but on which the advertising can be read by one looking from the side on which the advertising is printed. The Office Action merely makes the above-quoted conclusory statement without stating what “expected results” would be accomplished by combining any features of Heister with the teachings of Black.

To pursue this further, Black already contains holes, insofar as it relates to “mesh nets” and “cord nets.” Furthermore, Black already permits the printing of advertising on such nets, as noted in the Office Action. Office Action at 2. Furthermore, one can see through the nets of Black. Hence, there is no need to combine the teachings of Heister with those of Black; Black already has the “expected” features of Heister.

Also, Heister is altogether unrelated to nets of any type. On the contrary, Applicant observes that Heister merely discloses a sheet of flexible material having fine, evenly-distributed holes, and on which may be printed advertisements. See, e.g., Heister at abstract. Consequently, Applicant respectfully submits that Heister teaches away from use in a net, and further submits that even if one were to combine Heister’s teachings with those of Black, one would not obtain the claimed subject matter (see, also, the discussion relating to Claim 6, below, which elaborates on this discussion).

For at least these reasons, Applicant respectfully submits that the references as presented by the Office Action fail to support the rejection of Claim 1 and thus of Claims 2-12, 14, and 25-29, which depend therefrom.

Additionally, Applicant notes that at least some of the various dependent claims have further grounds on the basis of which they are distinct from the combination of cited references.

Claim 5, as amended, recites, “wherein the size, shape and/or arrangement of the holes relative to each other varies/vary throughout the surface of the net.” Applicant has found no such teachings or suggestions in either of the cited references. Both references appear to be silent regarding this, and both references show only uniform hole structures/arrangements. For

at least this further reason, it is respectfully submitted that the cited references fail to support a rejection of Claim 5.

Claim 6 (as amended) recites, "wherein an area ratio of holes to foil is 3:1 or more." The Office Action alleges, "It would have been obvious to a person having ordinary skill in this art, by routine experimentation, to provide Black with any reasonable mesh size, including the recited ratio of holes to foil of 3:1 or more, depending on the specific net application." Applicant respectfully disagrees. The question is not whether it would have been obvious to use any mesh size in Black; rather, the question is whether it would have been obvious to have the area ratio of holes to foil, in the combination of Black with Heister, be 3:1 or more, and Applicant maintains that this would not have been obvious. Heister specifically uses "fine, evenly-distributed holes." Heister at col. 1, lines 22-29; see, also, Fig. 1. This suggests a much smaller ratio of holes to foil than 3:1; to wit, it appears in Fig. 1 that Heister uses a ratio in which the area of the foil is, to the contrary, at least as great as the area of the holes. This is supported by the problems being solved by Heister, namely: having the foil appear to be sufficiently transparent from one looking at the unprinted side (i.e., the printed matter is only apparent to a viewer looking at the printed side) and preventing the leaking of the printed matter from the desired side to the opposite side (and thus hindering such transparency; it is further noted that another problem addressed in Heister is reducing a tendency to blow in the wind). Heister at col. 1, lines 6-16. By using a large ratio of hole area to foil area, it would be more difficult to prevent the printing from "leaking" to the undesired side/being seen by a viewer on the undesired side. Consequently, Applicant respectfully submits that Heister teaches away from what one would consider to be a net (rather, it teaches the use of a foil with "fine, uniformly-distributed holes"), and particularly from a net having "an area ratio of holes to foil of 3:1 or more," as claimed in Claim 6. For at least this further reason, it is respectfully submitted that the cited references fail to support a rejection of Claim 6.

Therefore, Applicant respectfully requests that this rejection of Claims 1-12, 14 and 25-29 under 35 U.S.C. §103 be withdrawn.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Black and Heister in view of U.S. Patent No. 5,601,907 to Matsumoto (hereinafter "Matsumoto"). This rejection is respectfully traversed for at least the following reasons.

First, it is noted that Claim 13 depends from Claim 1. Therefore, the above arguments apply to Claim 13, as well. Furthermore, Applicant has not found any teachings in Matsumoto that would address the deficiencies of the combination of Black and Heister discussed above.

Second, it is noted that Claim 13 recites, "wherein the foil has a textile structure whose fibres are glued or welded together." The Office Action states, "Matsumoto teaches that it is old and well-known in the art that nets can be formed by welding joints. See column 8, lines 55-62." Office Action at 4. However, merely addressing "welding joints" fails to teach or suggest all of the subject matter claimed in Claim 13, which also requires, "the foil has a textile structure." Matsumoto, in the cited portion, addresses only "a number of meshy pipes 7b knitted of synthetic fiber or metallic fiber...disposed at required intervals in parallel crossing relation and joined together at the crossing points by sewing means or bonding or welding means, thereby forming a net." Matsumoto at col. 8, lines 55-59. Nowhere does Matsumoto disclose or suggest a foil that "has a textile structure," as claimed; Matsumoto merely discloses a textile (or metallic) net.

For at least the above reasons, it is respectfully submitted that the combination of references, as presented in the Office Action, fails to support the rejection of Claim 13. Therefore, Applicants respectfully request that this rejection of Claim 13 under 35 U.S.C. §103 be withdrawn.

#### Disclaimer

Applicant may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

**CONCLUSION**

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22407-00040-US from which the undersigned is authorized to draw.

Dated: February 16, 2011

Respectfully submitted,

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